



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

A public consultation document issued by the
Telecommunications Regulatory Authority of the Kingdom of Bahrain

Regulation on Commercial Bulk Messages

16 September 2010

Reference: CCA/0810/230

The address for responses to this document is:

The General Director

Telecommunications Regulatory Authority (TRA)

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the

Authority's email address at consult@tra.org.bh

The deadline for responses is **4pm on 17 October 2010**

Purpose: To seek stakeholder's views on the proposed Regulation on Commercial Bulk Messages.

Instructions for submitting a response

The Telecommunications Regulatory Authority (“the Authority”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than **17 October 2010 by 4pm**.

Responses to this document should be sent to:

The General Director
Telecommunications Regulatory Authority
P.O. Box 10353, Manama, Kingdom of Bahrain
Alternatively, responses may be sent to the Authority for the attention of the General Director by email to consult@tra.org.bh.

Responses should include:

- the name of the responding entity;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and email address); and
- a Microsoft Word version of the Response.

In the interest of transparency, the Authority will make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate requests for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.¹

Respondents are required to clearly mark any information included in their submission which is considered confidential. Where such confidential information is included respondents are required to provide both a **confidential** and **non-confidential** version of their submission. If a submission is marked confidential in its entirety, reasons for this should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

Once the Authority has received and considered responses to this consultative document, the Authority will issue final versions of the Regulation on Commercial Bulk Messages, together with a report on the consultation.

¹ http://www.tra.org.bh/en/pdf/Confidentiality_Guidelines_Final.pdf

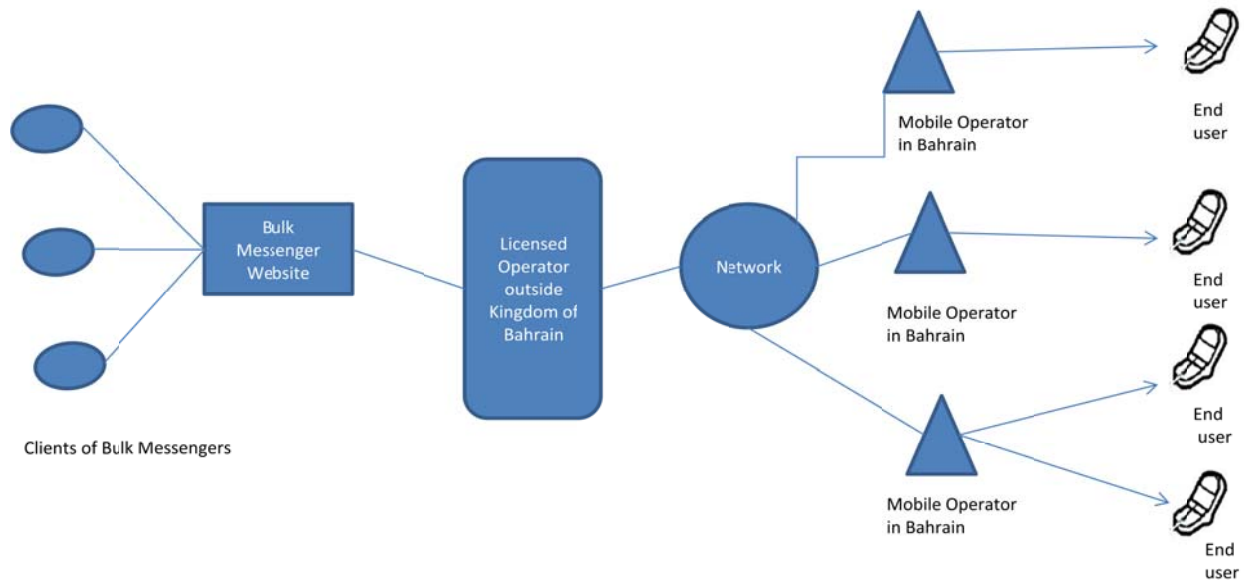
Proposed measure

1. To publish the attached Regulation on Commercial Bulk Messages (“**Regulation**”).

Introduction and Background

2. This Consultation is issued pursuant to the Authority’s Consultation Process Regulation issued by the Authority on 10 August 2003.²
3. Under Article 3(b) (1) of the Telecommunications Law promulgated by Legislative Decree No. 48 of 2002 (“**Telecommunications Law**”), the Telecommunications Regulatory Authority of the Kingdom of Bahrain (“**the Authority**”) must carry out its duties in the manner best calculated to, amongst other things, protect the interests of Subscribers and Users in respect of the provision of service, the quality of service and the protection of personal particulars and privacy of services.
4. The Authority has responsibility for overseeing and regulating consumer affairs in the telecommunications sector.
5. In 2009, the Authority conducted a consultation regarding a proposed Regulation on Unsolicited Bulk Messages which included the regulation of unsolicited short message service (“**SMS**”) and multimedia message service (“**MMS**”). This consultation was issued pursuant to previous consultations conducted regarding similar matters. As a result of the previous consultations, consumers expressed concern about receiving unsolicited promotional communications by means of bulk SMS or MMS, which resulted in the proposed Regulation on Unsolicited Bulk Messages.
6. As a result of the 2009 consultation on the proposed Regulation on Unsolicited Bulk Messages and consideration of the nature of unsolicited bulk SMS and MMS services, the Authority proposes to introduce a Regulation on Commercial Bulk Messages.
7. The Authority has also taken into account representations made by bulk messenger companies that are resellers of a bulk messaging service to customers and do not own Telecommunications Equipment for the purpose of delivery of bulk SMS to customers. They do not, in all cases, directly interconnect with Licensed Operators in the Kingdom of Bahrain and may offer the marketing and content of the bulk service only through a web based application. In these cases the conveyance of bulk SMS to end users occurs through mobile networks of Licensed Operators operating outside the Kingdom of Bahrain. The Authority cannot regulate these Licensed Operators as they fall out of the Authority’s territorial and legal jurisdiction. As such the Authority can only, through the Regulation on Commercial Bulk SMS, attempt to ensure that bulk messengers are Signatories to the Bulk Messaging Code of Practice. Please see the below diagram to further gain an understanding of the technical operation of bulk messengers that utilise Licensed Operators outside the Kingdom of Bahrain.

² Arabic and English versions of the Consultation Process Regulation can be found at <http://www.tra.org.bh/en/LegalRegulations.asp>. Note that only the Arabic version of Consultation Process Regulation may be relied upon for legal purposes. The English translation is published for information purposes only.



8. With the above in mind the Regulation will apply to all Licensed Operators and will set out rules, guidelines and minimum standards of practice for the sending of Commercial Bulk Messages. The Authority encourages all other Bulk Messengers and their clients (including advertising and marketing agencies acting on behalf of a particular person, as well as customers that deal directly with bulk messengers) to become Signatories to the Code of Practice. In this way recipients and clients will know that their messages will be sent in accordance with the Code of Practice, and thereby reduce the annoyance caused by unsolicited Bulk Messages.
9. The Authority also publishes with this Consultation a proposed Position Paper on the Regulatory Treatment of Bulk Messengers. This will be published separately from the Regulation and Code of Practice. The reasons for publication of this position paper are those outlined in paragraph 7 above. The Authority considers that it would be beneficial to publish this Position Paper to provide guidance to persons that are providing or considering providing Bulk Messaging Services in the Kingdom.
10. Annex A of the Regulation is a Code of Practice for the sending of Commercial Bulk Messages (“**the Code of Practice**”). Companies are encouraged to formally commit to the Code of Practice and register as a signatory of the Code of Practice. Signatories that are found to be not compliant with the Code of Practice will be removed from the List of Signatories and may be placed on the List of Non-Signatories with an explanation of reasons for their removal. Licensed Operators found to be not compliant with the Code of Practice will be investigated and ordered in accordance with the standard procedure under Article 35 of the Telecommunications Law for failing to comply with the Telecommunications Law and Licences.

11. The Code of Practice is particularly relevant for companies participating in the delivery of Commercial Bulk Messages. For example, retail companies, marketing companies and advertising companies.

Objective of the Regulation

12. To date, no specific guidelines or regulations have been issued for the protection of consumers in relation to the operation of commercial bulk messages.
13. The Authority proposes to publish this Regulation, subject to consideration and amendment pursuant to comments received from interested parties. Following publication of the Regulation, the Authority will continue to monitor the effectiveness of the Regulation.

Consultation

14. The Authority seeks the comments of stakeholders in the Bahraini telecommunications industry, business community and public generally on the proposed measure and asks the following questions:
 - (a) Do you agree with the scope of this Regulation? If not, what would you like to change or add? Please provide detailed reasons for your proposals, including where relevant references to the specific provisions of the Telecommunications Law or Licences that you are relying upon; and
 - (b) What other issues do you think should be included in or excluded from this Regulation?
15. Respondents are invited to make any other comments regarding the Regulation. All other comments should also be supported by a detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law or Licences that the Respondent is relying upon.
16. All comments should contain a brief statement explaining the interest of the party submitting the comments.
17. The Authority may, but is not obliged to make comments public.
18. Upon receipt of the comments from stakeholders, the Authority will consider such comments to assist in considering and determining whether to issue the proposed Regulation.

Regulation on Commercial Bulk Messaging

A Regulation issued by the
Telecommunications Regulatory Authority of the Kingdom of Bahrain

Draft

A- Definitions

1. Any capitalized word, or expression, shall have the meaning given to it in the Telecommunications Law.
2. References to a word or phrase in the plural encompass references to words or phrases in the singular and vice versa.
3. References to time are made using the 24 hour clock and refer to the time within the Kingdom of Bahrain.
4. Any word, phrase or expression used in this Regulation shall, unless it is expressly defined herein, have the same meaning as in the Telecommunications Law of the Kingdom of Bahrain, Legislative Decree No 48 for 2002.
5. For the purposes of this Regulation the following terms and expressions have the following meanings:

“Advertiser” means any person that is engaged in the business of advertising on behalf of other Persons.

“Application Form” means the application form in Schedule B of this Regulation.

“Bulk Message” means any communication, including short text messages (“SMS”) or multimedia message (“MMS”), sent or intended to be sent to more than one Recipient in the Kingdom of Bahrain over a Licensed Operators’ Telecommunications Network.

“Bulk Messaging Code of Practice” the Code of Practice attached at Schedule A of this Regulation.

“Bulk Messenger” means any Person that is entitled by virtue of an arrangement with a Licensed Operator to send Commercial Bulk Messages over Licensed Operators’ Telecommunications Networks.

“Client” means any Person that is a client of an Advertiser, Bulk Messenger or Licensed Operator for the purpose of sending a Commercial Bulk Message.

“Commercial Bulk Message” means any Bulk Message sent:

- (a) with the purpose of offering to supply goods, services or business opportunities;
- (b) with the purpose of advertising or promoting goods, services, events or business opportunities; or
- (c) any other purpose designated by the TRA from time to time by determination issued by the General Director of the Authority.

“List of Signatories” means the list of names and contact details of the Signatories to the Bulk Messaging Code of Practice which is published on the Authority’s website from time to time.

“List of Non Signatories” means the list of names of Persons that have voluntarily withdrawn from the List of Signatories, that have been removed from the List of Signatories by the Authority or that are providing Bulk Messaging services without being Signatories.

“Signatory” means any Person that has applied to be a Signatory to the Bulk Messaging Code of Practice in accordance with the procedures of this Regulation and has had its name added to the List of Signatories.

“Recipient” means any User of or Subscriber to a Mobile Telecommunications Service in the Kingdom of Bahrain.

B- Commercial Bulk Messaging Code of Practice

6. The Bulk Messaging Code of Practice forms part of this Regulation and each Licensed Operator must comply with the Bulk Messaging Code of Practice.
7. A failure by a Licensed Operator to comply with the Bulk Messaging Code of Practice shall be considered a breach of this Regulation and enforceable per articles 18 and 19 of this Regulation
8. Subject to article 16 of this Regulation, Licensed Operators may only receive and act on instructions to send Commercial Bulk Messages from a Signatory of the Bulk Messaging Code of Practice.
9. A Licensed Operator shall not be considered in breach of this Regulation if an Advertiser, Bulk Messenger or Client sent a Bulk Message to any Recipient that breaches the Bulk Messaging Code of Practice without the Licensed Operator’s express or implied consent or knowledge.
10. Each Licensed Operator must publish the Bulk Messaging Code of Practice on its website and provide a prominent link to the Bulk Messaging Code of Practice and List of Signatories and List of Non-Signatories on the Authority’s website.

C- Signatories to the Bulk Messaging Code of Practice

11. The Authority shall publish the List of Signatories and the List of Non Signatories on its website.
12. In order to become a Signatory of the Bulk Messaging Code of Practice, a Person must complete the Application Form and submit the Application Form to the Authority. If the Person has properly completed the Application Form, the Authority will provide the Person with written acknowledgement of being a Signatory within a reasonable time and will publish that Person’s name on the List of Signatories.
13. Where the Authority receives a complaint or it otherwise comes to the attention of the Authority that a Signatory is not complying with the Code of Practice the

Authority shall notify the Signatory in writing of the alleged breach and provide it with 15 working days to respond in writing to the allegations.

14. The Authority may remove a Person from the List of Signatories where the Authority considers the Person has failed to comply with the Code of Practice in a serious or continuous manner and place that Person's name on the List of Non Signatories. The Authority will publish on the List of Non Signatories the the reasons for the Person's removal from Signatory status.
15. Persons wishing to voluntarily withdraw their Signatory status to the Bulk Messaging Code of Practice must provide the Authority with written notice of their withdrawal at least one month prior to the date of withdrawal.
16. A Person that has been removed from the List of Signatories for any reason may reapply to the Authority for inclusion on the List of Signatories. The Authority may refuse to add that Person to the List of Signatories. In this case the Authority will provide reasons for its refusal in writing to that Person.

D- Bulk Messages that do not need to comply with this Regulation

17. The following forms of Bulk Messages are not subject to this Regulation:
 - (a) a public announcement from or on behalf of a ministry or agency that forms part of the government of the Kingdom of Bahrain; and
 - (b) a network fault event report or notice sent on behalf of a Licensed Operator.

E- Enforcement and penalties

18. TRA shall enforce this Regulation and the provisions mentioned hereunder through orders issued under section 35 of the Telecommunications Law.
19. Any material breach of this Regulation shall also be deemed to constitute a material breach of the Telecommunications Law and, where appropriate, of any relevant Telecommunications License held by the relevant Licensed Operator.

F- Entry into Force

This Regulation shall enter into force three months from the date of its publication in the Official Gazette.

Schedule A

Commercial Bulk Messaging Code of Practice

The Licensed Operators, Bulk Messengers, Advertisers and Clients that provide or use Commercial Bulk Messaging services and which have signed this Code of Practice agree to the following principles:

1. We respect and are committed to the privacy of all Users and Subscribers of telecommunications services in the Kingdom of Bahrain.
2. We aim to provide a valuable and viable commercial service for our clients that will enhance the consumer experience of Users and Subscribers.

To achieve these principles the Signatories shall develop working relationships with each other and industry best practices to achieve the objects of this Code of Practice, and will observe each of the following rules. The definitions of the the Telecommunications Regulatory Authority's Commercial Bulk Messaging Regulation apply to this Code of Practice:

- (a) Licensed Operators and Signatories shall ensure that Commercial Bulk Messages shall only be received by Recipients between the hours of 09:00 and 20:00 in the Kingdom of Bahrain;
- (b) Unless expressly agreed with the Recipient no more than two Commercial Bulk Messages per day may be sent by any Licensed Operator, Bulk Messenger or Advertiser on behalf of any single Client to any single Recipient over any Licensed Operator's network;
- (c) Commercial Bulk Messages must clearly state the identity and contact details, including at a minimum a valid telephone number or email address, of the Client on whose behalf the Commercial Bulk Message is being sent in order to allow Recipients to directly contact that Client;
- (d) Each Commercial Bulk Message must provide a simple method for opting out of receiving any Commercial Bulk Messages from the Client on whose behalf the Bulk Message was sent or from the Bulk Messenger including, where possible, those Bulk Messages sent from outside of the Kingdom of Bahrain. Such an opt-out system shall be available through either a free-of-charge SMS or a toll free number, details of which must be specified in the Commercial Bulk Message;
- (e) The cost of responding to Commercial Bulk Messages, exclusive of the standard network costs for the relevant Licensed Operator, shall be specified in the Commercial Bulk Message.
- (f) The Signatories to this Code of Practice will only provide, acquire or use the personal details of Users and Subscribers that have expressly consented to the receipt of Commercial Bulk Messages or other marketing materials.
- (g) The Signatories are responsible to update themselves with this Code of Practice and the List of Signatories and List of Non-Signatories on the Authority's website as updated from time to time.

Schedule B

Application form for Signatory to the Commercial Bulk Messaging Code of Practice

Name of Signatory (Company name as per Commercial Registration)	
Company Number	
Contact Person Name	
Contact Person Title	
Telephone Number	
Email Address	
Postal Address	

Declaration by Signatory

The Signatory undertakes to **fully comply** with the provisions of the **Commercial Bulk Messaging Code of Practice** as may be amended by the Authority from time to time.

The Person signing this document is authorised to execute this document on behalf the Signatory.

Name of Authorised Person	
Signature of Authorised Person	
Title/Position	
Date	